

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
JOHN C. KNEELAND,)
Appellant,)
v.)
OLYMPIC AIR POLLUTION)
CONTROL AUTHORITY,)
Respondent.)

PCHB No. 778

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a \$250 outdoor fire violation;
having come on regularly for hearing before the Pollution Control
Hearings Board on the 27th day of May, 1975, at Lacey, Washington;
and appellant, John C. Kneeland, appearing through his attorney,
Glenn E. Correa and respondent, Olympic Air Pollution Control Authority,
appearing through its attorney, Fred D. Gentry; and Board members
present at the hearing being W. A. Gissberg (presiding), Chris
Smith and Walt Woodward and the Board having considered the sworn
testimony, exhibits, records and files herein and having entered

1 on the 13th day of June, 1975, its proposed Findings of Fact,
2 Conclusions of Law and Order, and the Board having served said
3 proposed Findings, Conclusions and Order upon all parties herein
4 by certified mail, return receipt requested and twenty days having
5 elapsed from said service; and

6 The Board having received no exceptions to said proposed
7 Findings, Conclusions and Order; and the Board being fully advised
8 in the premises; now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions of Law and Order, dated the 13th
11 day of June, 1975, and incorporated by this reference herein and
12 attached hereto as Exhibit A, are adopted and hereby entered as the
13 Board's Final Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington this 17th day of July, 1975.

15 POLLUTION CONTROL HEARINGS BOARD

16 Chris Smith
17 CHRIS SMITH, Chairman

18 W. A. Gissberg
19 W. A. GISSBERG, Member

20 Walt Woodward
21 WALT WOODWARD, Member

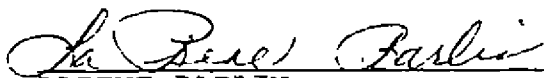
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26 FINAL FINDINGS OF FACT,
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CERTIFICATION OF MAILING

I, LaRene Barlin, certify that I deposited in the United States mail, copies of the foregoing document on the 18th day of July, 1975, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. Fred D. Gentry
Bean, Gentry and Rathbone
P. O. Box 2317
Olympia, Washington 98507

Mr. Glenn E. Correa
Attorney at Law
Bell Building
121 South Fourth Street
Shelton, Washington 98584


LARENE BARLIN
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,
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AND ORDER

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
JOHN C. KNEELAND,

Appellant,

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OLYMPIC AIR POLLUTION
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PCHB No. 778

FINDINGS OF FACT,
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PER W. A. GISSBERG: A formal hearing on the appeal of John C. Kneeland (hereinafter appellant) came on before Board members W. A. Gissberg (presiding), Chris Smith and Walt Woodward on May 27, 1975 at Lacey, Washington. Appellant appeared by and through his attorney, Glenn E. Correa; respondent by its attorney, Fred D. Gentry. Sherri Darkow, Olympia court reporter, recorded the proceedings.

From testimony heard and exhibits examined, the Pollution Control Hearings Board makes the following

EXHIBIT A

FINDINGS OF FACT

I.

Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3rd Ex. Sess, has filed with this Board a certified copy of its Regulation I containing respondent's regulations and amendments thereto.

II.

On October 28, 1974, respondent's inspector investigating a complaint of smoke from the Shelton Health Department, observed a large (15' x 20') smoldering fire on property owned and controlled by appellant near Goose Lake, Mason County, Washington. No permit had been issued for the fire and it was in an area in which prior fires had obviously occurred within a refuse dumping site used as such pursuant to a property right of ITT Rayonier. The instant fire had in it oil filters, plastic jugs, Visqueen, cardboard and foam material.

III.

Respondent's Regulation I makes it unlawful to cause or allow any open fire of the type here involved without a permit therefor and, under no circumstances is garbage or material containing petroleum or rubber products to be openly burned. Respondent's Regulation further provides at Section 9.01(e)

"It shall be prima facie evidence that the person who owns or controls property on which an open fire, prohibited by this Regulation, occurs has caused or allowed said open fire."

IV.

Both ITT Rayonier, the user of the dump site, and appellant deny that they ignited the fire. Appellant also vigorously asserted

FINDINGS OF FACT,

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1 that he had no knowledge concerning, and did not authorize it, but
2 speculated that it was started by "Honda people", who frequently trespass
3 upon his considerable acreage, notwithstanding his prior efforts
4 at having the Sheriff stop such No gate precluded entry to the
5 dump site, however. Appellant has made it a practice to bury the refuse
6 upon his property. Respondent was unable to prove who ignited the fire
7 or how the fire was started, nor identify the legal relationship between
8 appellant and two persons who stated, three days after the fire in
9 question, that fires were occasionally and periodically burned on
10 appellant's property Appellant was aware of the existence and propensity
11 of fires occurring on his property

12 V.

13 Respondent issued and personally served upon appellant its notices
14 of violations alleging violations of Section 9 01 of its Regulation I and
15 imposed a civil penalty of \$250, from which appellant appealed.

16 VI.

17 Appellant, after receiving respondent's imposition of civil
18 penalty, took the only other remaining reasonably available course of
19 action to prevent unauthorized fires, i e., the construction of a gate
20 to deter, if not prevent, future fires Appellant has no prior record
21 of violating respondent's regulations.

22 VII

23 Any Conclusion of Law hereinafter recited which should be deemed
24 a Finding of Fact is hereby adopted as such.

25 From these findings, the Pollution Control Hearings Board comes
26 to these

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 CONCLUSIONS OF LAW

2 I.

3 The effect of Section 9.01(e) of respondent's regulation is to
4 create a rebuttable presumption sufficient to create a prima facie
5 case against appellant. Upon proof that an unlawful open fire has occurred
6 upon property owned by appellant, the burden of going forward with the
7 evidence shifted to appellant (but not the burden of proof). Appellant's
8 testimony and proof which we accept as factual in this case, was that he
9 neither ignited, authorized nor had knowledge of the instant open fire.
10 At such point but for appellant's additional testimony, the burden of
11 going forward would ordinarily be shifted back to respondent. However,
12 appellant's own testimony established the fact that. he was aware of a
13 history of prior dump site fires upon his property; trespassers frequently
14 entered thereon and fires at such times occurred; he has now constructed
15 a gate which will prevent the entrance upon his property of those to
16 whom he attributed the fires.

17 II.

18 We hold that the owner of a refuse dump site who is in control
19 thereof "causes or allows" a fire upon his land when he fails to take
20 reasonable and timely precautions to prevent the continuing and unauthorized
21 entry thereon of persons known by him to ignite fires or who fails to
22 prevent the ignition of such burnable materials by burying such, and a
23 fire thereafter occurs.

24 III.

25 Appellant violated Section 9.01 of respondent's Regulation I

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IV.

Considering this to be appellant's first violation of respondent's regulation and the fact that he has now constructed a gate to the entrance to the refuse site, and, considering all of the facts of this case, we believe \$200 of the \$250 civil penalty should be suspended upon the condition that appellant does not violate respondent's regulations for a period of five years from the date of the final order herein.

V.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

Therefore, the Pollution Control Hearings Board issues this

ORDER

Respondent's notice of violation and imposition of a civil penalty are affirmed. However, \$200 of the \$250 civil penalty is suspended upon the condition that appellant does not violate respondent's regulations for a period of five years from the date of the final order herein.

DATED this 13th day of June, 1975.

POLLUTION CONTROL HEARINGS BOARD

Chris Smith
CHRIS SMITH, Chairman

W. A. Gissberg
W. A. GISSBERG, Member

Walt Woodward
WALT WOODWARD, Member

FINDINGS OF FACT,
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